

10-2356 & 11-15  
TAX TYPE: LOCALLY ASSESSED PROPERTY  
TAX YEAR: 2008 & 2010  
DATE SIGNED: 12-12-2011  
COMMISSIONERS: B. JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON  
GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2,  Petitioners,  v.  BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal Nos. 10-2356 & 11-15  Parcel Nos. PARCEL-1 PARCEL-2 Tax Type: Property Tax / Locally Assessed Tax Year: 2008 & 2010  Judge: Chapman
-------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.**

**Presiding:**

R. Bruce Johnson, Commission Chair  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-2, Taxpayer  
                  TAXPAYER-1, Taxpayer  
For Respondent: RESPONDENT, Deputy RURAL COUNTY Attorney

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 8, 2011. TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") submitted a post-hearing brief on February 19, 2011. The RURAL COUNTY Board of

Appeal Nos. 10-2356 & 11-15

Equalization (“County BOE”) submitted a post-hearing response brief on March 3, 2011.

At issue is the assessment of two subject properties for property tax purposes for both the 2008 tax year (*Appeal No. 10-2356*) and the 2010 tax year (*Appeal No. 11-15*). The two subject properties are agricultural parcels located in RURAL COUNTY, Utah. The first subject property is identified as Parcel No. ##### (“Parcel 1”), which the County BOE determined to be #####-acres in size. The County BOE sustained the County’s determination that Parcel 1 qualified for assessment under the Utah Farmland Assessment Act (“greenbelt assessment”). The second subject property is identified as Parcel No. ##### (“Parcel 2”), which the County BOE determined to be #####-acres in size.<sup>1</sup> The County BOE sustained the County’s determination that Parcel 2 does not qualify for greenbelt assessment.

In the taxpayer’s Reply to RURAL COUNTY BOE’s Initial Hearing Memorandum (taxpayer’s “Memorandum”, pp. 18-19), the taxpayers identify the actions they wish the Tax Commission to take in regards to their appeals. First, the taxpayers claim that the County incorrectly assessed and valued the two subject properties for 2008 and 2010. The County valued Parcel 1 as a #####-acre parcel and Parcel 2 as a #####-acre parcel. The taxpayers claim that these two parcels, which total #####-acres, were subdivided into ##### separate, #####-acre parcels in 1994. As a result, the taxpayers ask the Commission to order the County to subdivide Parcel 1 and Parcel 2 into ##### separate parcels of approximately #####- acres each for assessment purposes and to value the land as smaller, #####-acre parcels, even if such valuation results in a

---

1 For the 2008 tax year, the taxpayers filed an appeal with the Commission concerning the acreage of their property. The matter was designated *USTC Appeal No. 09-0835*. On January 27, 2010, the Commission issued an Order for RURAL COUNTY to Reconvene the 2008 Board of Equalization to Consider Correction for Factual Error for *Appeal No. 09-0835*. The County reconvened the 2008 County BOE and issued decisions on July 9, 2010, in which it increased the acreage of Parcel 1 from #####-acres to #####-acres (which increased its value by \$\$\$\$\$) and increased the acreage of Parcel 2 from #####-acres to #####-acres (which increased its value by \$\$\$\$\$). The taxpayers’ subsequently appealed the 2008 County BOE decision, and the matter was designated *Appeal No. 10-2356*. The taxpayers agree that the additional acreage determined by the 2008 County BOE exists. However, as explained later in the decision, they do not agree that the total acreage

higher total value for the subject properties. They also ask the Commission to “grandfather” the division of the properties into #####-acre parcels under the County ordinances that existed in 1994.<sup>2</sup>

Second, the taxpayers assert that the County Assessor’s decision not to subdivide the 2 subject properties into ##### separate, #####-acre parcels for assessment purposes has resulted in their tax liability on the subject properties being lower than it should have been for a number of years. Pursuant to Utah Code Ann. §59-2-315, the taxpayers ask the Commission to order the County Attorney to commence an action upon the assessor's bond for all taxes the County has lost from willful failure or neglect in assessing their properties.

Third, the taxpayers ask the Commission to find that Parcel 2 qualifies for greenbelt assessment for both 2008 and 2010. The taxpayers claim that Parcel 2 has continuously been used for agricultural purposes and that they have taken sufficient steps for it to qualify for greenbelt assessment. The taxpayers ask the Commission not only to put Parcel 2 “back on” greenbelt for the 2008 and 2010 tax years, but also to order the County to refund all “rollback” taxes they paid when the County removed Parcel 2 from greenbelt.

The County moves for the Commission to dismiss the taxpayers’ first issue, which concerns subdividing the 2 subject properties into ##### separate, #####-acre parcels and valuing them as such. First, the County claims that the Commission does not have subject matter jurisdiction to order the County to subdivide the 2 subject properties into ##### parcels. The County argues that the fact that market value is determined using the zoning laws applicable to a property does not authorize the Commission to consider the

---

should be assessed as only 2 parcels. Their primary argument is that the County should divide the 2 subject properties into ##### parcels and assess the ##### parcels accordingly.

2 In 1994, County ordinances provided that agricultural land could be split into #####-acre parcels on which residences could be built without having to make certain improvements usually associated with subdivisions (curb and gutter, sidewalks, etc.). Current County ordinances still allow agricultural land to be subdivided into #####-acre parcels, but only if the improvements usually associated with subdivisions are made. In addition, the taxpayers claim that the subject properties, if divided into #####-acre lots, could still be used for agricultural purposes under 1994 law and cannot be used for agricultural purposes if subdivided under current law.

Appeal Nos. 10-2356 & 11-15

land use decisions made by local governments. Second, the County contends that this issue should be dismissed because res judicata precludes the Commission from addressing it. The County claims that the taxpayers unsuccessfully sought to litigate the same issue in the Federal District Court for the District of Utah.

Should the Commission not dismiss the first issue, the County asks the Commission, in the alternative, to find that the taxpayers have not taken adequate steps to subdivide the subject properties into ##### separate parcels, either in 1994 or for any year subsequent year. The County admits that in 1994, the taxpayers provided the County Planning Commissioner with a copy of a Record of Survey that depicted their anticipated division of the 2 subject properties into ##### separate parcels. The County contends, however, that a “conveying” document must be recorded at the County Recorder’s Office to effectuate property segregation and that no such document has ever been recorded. Although the Record of Survey was recorded in 2005, the County contends that it is not a conveying document and, thus, did not effectuate the subject properties’ segregation.

The County did not address the second issue concerning Section 59-2-315 and the taxpayers’ request for the Commission to order the County Attorney to commence an action upon the assessor's bond. Concerning the taxpayers’ third issue, the County asks the Commission to find that Parcel 2 does not qualify for greenbelt assessment for either tax year at issue. At the hearing, the County argued that Parcel 2 does not qualify for greenbelt assessment because the taxpayers failed to sign an affidavit that the County Assessor asked them to sign in regards to the parcel.

APPLICABLE LAW

**Subject Matter Jurisdiction.**

Article XIII, sec. 6(3)(c) of the Utah Constitution provides that “[t]he State Tax Commission shall . . . adjust and equalize the valuation and assessment of property among the counties[.]”

Utah Code Ann. §59-1-210 provides the Tax Commission’s general powers and duties. The full

Appeal Nos. 10-2356 & 11-15

version of this statute is found in the addendum.

UCA §17-27a-801(1) provides that “No person may challenge in district court a county's land use decision made under this chapter, or under a regulation made under authority of this chapter, until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.”

UCA §17-27a-701 provides the method by which a land use matter may be appealed, as follows in pertinent part:

- (1) Each county adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:
  - (a) requests for variances from the terms of the land use ordinances; and
  - (b) appeals from decisions applying the land use ordinances.
- (2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.
- (3) An appeal authority:
  - (a) shall:
    - (i) act in a quasi-judicial manner; and
    - (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
  - (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
- (4) By ordinance, a county may:
  - (a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;
  - (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
  - ....
  - (e) provide that specified types of land use decisions may be appealed directly to the district court.
  - ....

RURAL COUNTY has adopted ordinances to clarify that the county planning commission, board of county commissioners, and/or county board of adjustment has the appeal authority to hear land use matters and that a county decision concerning land use is appealable to district court. The ordinances can be reviewed in the addendum.

**Valuation of Property and Appeal Rights.**

UCA §59-2-103(1) provides that “[a]ll tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.”

Utah Code Ann. §59-2-102(12) defines “fair market value” to mean “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. . . .”

UCA §59-2-1004 provides that a taxpayer can file an appeal with a county board of equalization, as follows in pertinent part:

- (1) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by:
  - (i) filing the application with the county board of equalization within the time period described in Subsection (2); or
  - (ii) making an application by telephone or other electronic means within the time period described in Subsection (2) if the county legislative body passes a resolution under Subsection (5) authorizing applications to be made by telephone or other electronic means.
- (b) The contents of the application shall be prescribed by rule of the county board of equalization.
- (2) (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:
  - (i) September 15 of the current calendar year; or
  - (ii) the last day of a 45-day period beginning on the day on which the county auditor mails the notice under Section 59-2-919.1.
- (b) Notwithstanding Subsection (2)(a), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (2)(a).

....

UCA §59-2-1006(1) provides that “[a]ny person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any

exemption in which the person has an interest, may appeal that decision to the commission . . . .”

Utah Admin. Rule R884-24P-66 (“Rule 66”) provides circumstances under which a county board of equalization can be reopened, as follows in pertinent part:

- A. 1. "Factual error" means an error that is:
  - a) objectively verifiable without the exercise of discretion, opinion, or judgment, and
  - b) demonstrated by clear and convincing evidence.
- 2. Factual error includes:
  - a) a mistake in the description of the size, use, or ownership of a property;
  - b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;
  - c) an error in the classification of a property that is eligible for a property tax exemption under:
    - (1) Section 59-2-103; or
    - (2) Title 59, Chapter 2, Part 11;
  - d) valuation of a property that is not in existence on the lien date; and
  - e) a valuation of a property assessed more than once, or by the wrong assessing authority.
- B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:
  - 1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.
  - 2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.
  - 3. The county did not comply with the notification requirements of Section 59-2-919(4).
  - 4. A factual error is discovered in the county records pertaining to the subject property.
  - 5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.
- C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.
- D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

....

For a party who is requesting a value that is different from that determined by the County BOE to prevail, that party must: 1) demonstrate that the value established by the County BOE contains error; and 2) provide the Commission with a sound evidentiary basis for reducing or increasing the valuation to the amount proposed by the party. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332, (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); and *Utah Railway Co. v. Utah State Tax Comm'n*, 5 P.3d 652 (Utah 2000).

**Assessor's Liability.**

UCA §59-2-315 addresses an assessor's liability for willful failure or neglect of duty, as follows:

- (1) The assessor and sureties are liable on the official bond for all taxes on property within the county which, through willful failure or neglect, is not assessed or which has been willfully assessed at less than its fair market value.
- (2) The county attorney shall, upon showing of proper evidence and upon written demand by the commission or the county legislative body, commence and prosecute to judgment an action upon the assessor's bond for all taxes lost from willful failure or neglect in assessing property.
- (3) If, during the trial of the action against the assessor, the value of the unassessed or underassessed property is determined, the assessor is liable for the difference between the amount of taxes collected and the amount of taxes which should have been collected pursuant to law.

**Utah Farm Assessment Act (Greenbelt Statutes).**

For purposes of greenbelt assessment, UCA §59-2-502(8) defines "actively devoted to agricultural use" and "withdrawn from this part," as follows:

- (1) "Actively devoted to agricultural use" means that the land in agricultural use produces in excess of 50% of the average agricultural production per acre:
  - (a) as determined under Section 59-2-503; and
  - (b) for:
    - (i) the given type of land; and
    - (ii) the given county or area.

....

- (8) "Withdrawn from this part" means that land that has been assessed under this part is no longer assessed under this part or eligible for assessment under this part for any reason

including that:

.....

(e) if required by the county assessor, the owner of the land:

(i) fails to file a new application as provided in Subsection 59-2-508(4); or

(ii) fails to file a signed statement as provided in Subsection 59-2-508(4); or

.....

For a property to qualify for greenbelt assessment, UCA §59-2-503 requires that the property meet certain qualifications, as follows in pertinent part:

(1) For general property tax purposes, land may be assessed on the basis of the value that the land has for agricultural use if the land:

(a) is not less than five contiguous acres in area, except that land may be assessed on the basis of the value that the land has for agricultural use:

(i) if:

(A) the land is devoted to agricultural use in conjunction with other eligible acreage; and

(B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have identical legal ownership; or

(ii) as provided under Subsection (4); and

(b) except as provided in Subsection (5):

(i) is actively devoted to agricultural use; and

(ii) has been actively devoted to agricultural use for at least two successive years immediately preceding the tax year for which the land is being assessed under this part.

.....

UCA §59-2-506 provides that a property “withdrawn from this part” is subject to a rollback tax, as follows in pertinent part:

(1) Except as provided in this section, Section 59-2-506.5, or Section 59-2-511, if land is withdrawn from this part, the land is subject to a rollback tax imposed in accordance with this section.

.....

(3) (a) The county assessor shall determine the amount of the rollback tax by computing the difference for the rollback period described in Subsection (3)(b) between:

(i) the tax paid while the land was assessed under this part; and

(ii) the tax that would have been paid had the property not been assessed under this part.

(b) For purposes of this section, the rollback period is a time period that:

(i) begins on the later of:

(A) the date the land is first assessed under this part; or

(B) five years preceding the day on which the county assessor mails the notice required by Subsection (5); and

(ii) ends the day on which the county assessor mails the notice required by Subsection (5).

....

(5) (a) The county assessor shall mail to an owner of the land that is subject to a rollback tax a notice that:

(i) the land is withdrawn from this part;

(ii) the land is subject to a rollback tax under this section; and

(iii) the rollback tax is delinquent if the owner of the land does not pay the tax within 30 days after the day on which the county assessor mails the notice.

(b) (i) The rollback tax is due and payable on the day the county assessor mails the notice required by Subsection (5)(a).

(ii) Subject to Subsection (7), the rollback tax is delinquent if an owner of the land that is withdrawn from this part does not pay the rollback tax within 30 days after the day on which the county assessor mails the notice required by Subsection (5)(a).

....

(10) (a) Subject to Subsection (10)(b), an owner of land may appeal to the county board of equalization:

(i) a decision by a county assessor to withdraw land from assessment under this part;

or

(ii) the imposition of a rollback tax under this section.

(b) An owner shall file an appeal under Subsection (10)(a) no later than 45 days after the day on which the county assessor mails the notice required by Subsection (5).

UCA §59-2-508 provides that if an owner of land eligible for greenbelt assessment wants the land assessed as greenbelt property, the owner shall submit an application, as follows:

(1) If an owner of land eligible for assessment under this part wants the land to be assessed under this part, the owner shall submit an application to the county assessor of the county in which the land is located.

(2) An application required by Subsection (1) shall:

(a) be on a form:

(i) approved by the commission; and

(ii) provided to an owner:

(A) by the county assessor; and

(B) at the request of an owner;

(b) provide for the reporting of information related to this part;

(c) be submitted by:

(i) May 1 of the tax year in which assessment under Subsection (1) is requested if the land was not assessed under this part in the year before the application is submitted; or

(ii) by the date otherwise required by this part for land that prior to the application being submitted has been assessed under this part;

- (d) be signed by all of the owners of the land that under the application would be assessed under this part;
- (e) be accompanied by the prescribed fees made payable to the county recorder;
- (f) include a certification by an owner that the facts set forth in the application or signed statement are true;
- (g) include a statement that the application constitutes consent by the owners of the land to the creation of a lien upon the land as provided in this part; and
- (h) be recorded by the county recorder.

.....

(4) (a) Once the application for assessment described in Subsection (1) has been approved, the county may:

- (i) require the owner to submit a new application or a signed statement:
  - (A) by written request of the county assessor; and
  - (B) that verifies that the land qualifies for assessment under this part; or
- (ii) except as provided in Subsection (4)(b), require no additional signed statement or application for assessment under this part.

.....

(c) An application or signed statement required under Subsection (4)(a) shall be submitted by the date specified in the written request of the county assessor for the application or signed statement.

.....

#### DISCUSSION

**I. Taxpayers' Request for the Commission to Subdivide the Subject Properties into ##### Separate, #####-Acre Parcels under 1994 Law and County's Request for the Commission to Dismiss this Issue.**

The taxpayers ask the Commission to order the County to subdivide the 2 subject properties into ##### separate, #####-acre parcels in accordance with a 1994 Record of Survey and to "grandfather" the split under the county ordinances that existed in 1994. The County asks the Commission to dismiss the issue on either of two arguments. The Commission will first decide whether to grant or deny the County's motion to dismiss this issue. Only if the Commission denies the County's motion to dismiss this issue will it examine the evidence to determine whether the taxpayers have shown that they took adequate steps in 1994 or later to subdivide the subject properties into ##### separate parcels.

The taxpayers contend that the Tax Commission is authorized to address their request to subdivide the subject properties because Article XIII, sec. 6(3)(c) of the Utah State Constitution provides that one of the

Appeal Nos. 10-2356 & 11-15

Commission's duties is to "adjust and equalize the valuation and assessment of property amount the counties[.]" The taxpayers argue that assessing and valuing the subject properties as 2 parcels instead of ##### separate, #####-acre parcels negatively affects the properties' values, thus making this an issue that is properly before the Commission pursuant to the Utah Constitution.

The County, on the other hand, contends that the Commission does not have subject matter jurisdiction to order the County to subdivide the subject properties or to find that such division should be governed by 1994 County ordinances. As a result, it asks the Commission to dismiss this particular issue for lack of jurisdiction. The County explains that the general powers and duties of the Commission are outlined in Section 59-1-210. In the County's Initial Hearing Memorandum (County's "Memorandum"), it stated that the "Commission has been given the authority to generally supervise and administer the state tax laws, including general supervision over assessors, boards of equalization, and other county officers in their duties related to the assessment of property and the collection of taxes." The County argues, however, that this "authority does not spill into the administration of land use ordinances or the division of property." The County contends that the Commission "has not been given the authority to review, compel, direct, or require a county to recognize parcels of property as divided."

The County explains that the Legislature has statutorily provided for an appeals process to review county land use decisions, a process that does not involve the Tax Commission. Specifically, Section 17-27a-801(1) provides that: "No person may challenge in district court a county's land use decision made under this chapter . . . until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable." Section 17-27a-701 provides the administrative remedies by which a land use matter may be appealed prior to district court review. Section 17-27a-701(1)(b) specifically provides that a county shall adopt by ordinance "one or more appeal authorities to hear and decide . . . appeals from decisions applying the land use ordinances." RURAL COUNTY has adopted ordinances to provide that the

Appeal Nos. 10-2356 & 11-15

county planning commission, board of county commissioners, and/or county board of adjustment has the appeal authority to hear land use matters and that a county decision concerning land use is appealable to district court. See RURAL COUNTY Ordinances 17.08.010 - 17.08.040, 17.76.010 – 17.76.050, and 17.80.030 in addendum.

The County also notes that the Utah Court of Appeals has previously reviewed the extent of the Commission's authority to review tax matters in *Blaine Hudson Printing v. Utah State Tax Comm'n*, 870 P.2d 291 (UT App 1994). In *Blaine Hudson*, the taxpayer asked the Commission to review a county's decision not to issue a refund of taxes pursuant to UCA §59-2-1321. In *Blaine Hudson*, the taxpayer acknowledged that no specific law existed authorizing the Commission to order the County to refund taxes for a year it did not file an appeal. Regardless, the taxpayer argued that such powers are implied in Section 59-1-210, which describes the general powers and duties of the Tax Commission.

The Court disagreed with the taxpayer, stating that “[b]oth courts and quasi-judicial administrative agencies, such as the Tax Commission, must have subject matter jurisdiction to validly decide a controversy.”

The Court explained that while provisions in Section 59-1-210 “give the Tax Commission general supervisory and advisory powers over county tax collection functionaries, they do not confer jurisdiction to hear appeals from their decisions. The Tax Commission, while created by constitutional mandate, is limited in its power and scope by the Legislature.” The Court stated that “[t]he Legislature has demonstrated that it can unambiguously confer jurisdiction on the Tax Commission when it so desires” and observed that the Tax Commission, by statute, has been given jurisdiction to review local taxing authorities' assessment decisions (UCA §59-2-1006(1)) and exemption decisions (UCA §59-2-1004(4)). The Court found, however, that “absent such legislative empowerment, the Tax Commission is not authorized to hear appeals from local agency decisions.”

Appeal Nos. 10-2356 & 11-15

Based on the foregoing, it appears that the Legislature has not conferred jurisdiction on the Tax Commission to review a County's land use decisions, including any decision concerning a taxpayer's proposal to subdivide land. Instead, the Legislature has expressly provided in Section 17-27a-701(1)(b) that a county shall adopt by ordinance "one or more appeal authorities to hear and decide . . . appeals from decisions applying the land use ordinances." RURAL COUNTY has adopted such ordinances and provided for county appeal authorities, not the Tax Commission, to hear land use matters prior to them being appealed to the district court.

Because Utah law provides for authorities other than the Tax Commission to review a county's land use decisions, the Commission finds that it does not have subject matter jurisdiction to determine whether the taxpayers took appropriate steps to subdivide the subject properties into ##### separate, #####-acre parcels under the 1994 County ordinance. Any appeal to address this issue should be filed not with the Tax Commission, but with the appropriate County administrative body that the County has designated by ordinance pursuant to Section 17-27a-701.

For these reasons, the Commission grants the County's motion to dismiss this issue from the two instant appeals. Because the Commission has dismissed this issue on the basis of subject matter jurisdiction, the Commission need not address the County's argument that the issue could also be dismissed on the basis of res judicata. In addition, the Commission need not address whether or not the taxpayers have shown that they took adequate steps to subdivide the subject properties into ##### separate, #####-acre parcels.

**II. Taxpayers' Request for the RURAL COUNTY Assessor and Sureties to be Liable for Certain Taxes.**

Section 59-2-315(1) provides that "[t]he assessor and sureties are liable on the official bond for all taxes on property within the county which, through willful failure or neglect, is not assessed or which has been willfully assessed at less than its fair market value." Section 59-2-315(2) provides that "[t]he county attorney

Appeal Nos. 10-2356 & 11-15

shall, upon showing of proper evidence and upon written demand by the commission or the county legislative body, commence and prosecute to judgment an action upon the assessor's bond for all taxes lost from willful failure or neglect in assessing property.” Based on these provisions, the taxpayers ask the Tax Commission to order the County Attorney to commence an action upon the assessor's bond for all taxes the County has “lost” due to the County Assessor’s willful failure or neglect in assessing the subject properties as 2 parcels that are #####-acres and #####-acres in size instead of ##### separate, #####-acre parcels.

The Commission declines to order the County Attorney to commence an action against the assessor’s bond. As discussed in the prior section, the taxpayers should appeal the subdivision issue to the appropriate County administrative body for a determination of whether they have previously subdivided their land. Neither party has proffered a decision from a County administrative body either approving or rejecting the taxpayers’ proposed land subdivision. As a result, it is not clear that the County has improperly assessed the taxpayers’ land as 2 larger parcels instead of ##### smaller parcels. On the contrary, one could argue that the County would have acted improperly had it assessed the taxpayers’ land as ##### separate parcels without the County having approved the proposed subdivision. In any case, the County’s actions do not appear to reflect “willful failure or neglect,” which is one of the requirements in Section 59-2-315.

Section 59-2-315 also requires any willful failure or neglect to result in a property not being assessed or the property being assessed at less than its fair market value. Parcel 1 is currently assessed at \$\$\$\$ for the 2008 tax year and \$\$\$\$ for the 2010 tax year. Parcel 2 is currently assessed at \$\$\$\$ for the 2008 tax year and \$\$\$\$ for the 2010 tax year. It is plausible that the taxpayers’ 2 parcels could have a higher value if it were subdivided into ##### parcels. However, the taxpayers have not proffered any evidence to show that their land would have a higher value as ##### smaller parcels instead of 2 larger parcels. Without such evidence, it is not clear that the taxpayers’ land was assessed at less than its fair market value for either year at

issue. For these reasons, the taxpayers' request for the Commission to order the County Attorney to commence an action against the assessor's bond pursuant to Section 59-2-315 should be denied.

### **III. Greenbelt Issues Concerning Parcel 2.**

Parcel 1 and Parcel 2 were both approved for greenbelt assessment in 1994, soon after the taxpayers purchased the properties. Both parcels were assessed under greenbelt as late as February 2007. Parcel 1 is still on greenbelt, and its greenbelt status is not at issue. The greenbelt status of Parcel 2, however, is at issue. It appears that the County removed Parcel 2 from greenbelt at some point after February 9, 2007, but prior to mid-2008 when the 2008 assessment roll was completed. The taxpayers ask the Commission to find that Parcel 2 qualifies for greenbelt assessment for both the 2008 and 2010 tax years. In addition, the taxpayers ask the Commission to order the County to refund the rollback taxes they paid when the County removed Parcel 2 from greenbelt. The Commission will first address the rollback tax issue, after which it will address whether Parcel 2 qualifies for greenbelt assessment for either the 2008 or 2010 tax year.

**Rollback Assessment.** The County Assessor mailed a letter dated February 9, 2007 ("2007 letter") to the taxpayers' former attorney, in which he indicated that he could "not find in the county records any recordation" of a greenbelt application" for Parcel 2.<sup>3</sup> The County enclosed in the 2007 letter greenbelt applications for both Parcel 1 and Parcel 2 and asked for the applications to be completed and returned. In the 2007 letter, the County Assessor identified Parcel 1 to be #####-acres in size and Parcel 2 to be #####- acres in size. (The County's 2007 letter was sent prior to July 9, 2010, the date the 2008 County BOE increased the acreage of Parcel 1 to #####-acre and Parcel 2 to #####-acres).

---

<sup>3</sup> The County apparently found an application for Parcel 1 in its records, as the letter addressed both Parcel 1 and Parcel 2 and only stated that an application for Parcel 2 could not be found. The taxpayers proffered a document to show that the application for Parcel 2 was, in fact, in County records. The document shows that the application for Parcel 2 was approved by the County Assessor on November 28, 1994 and was recorded at the County first on November 28, 1994 and again on December 1, 1995.

Appeal Nos. 10-2356 & 11-15

After the taxpayers received the County's 2007 letter, they contend that they informed the County that they could not complete and sign an application for either Parcel 1 or Parcel 2 until the County corrected the acreages of the parcels and assigned the land ##### separate parcel numbers. The taxpayers indicate that through correspondence, they tried to provide the County Assessor with alternative information that would suffice for their land to remain on greenbelt assessment. Although this correspondence was not proffered by either party, the taxpayers did proffer an Affidavit of TAXPAYER-2 dated July 9, 2007 ("TAXPAYER-2 Affidavit") that they sent to the County. In TAXPAYER-2 Affidavit, she declared and stated that "[t]he land that my husband, TAXPAYER-1, and I own in CITY, Utah, is being used for agricultural purposes and always has been used for agricultural purposes."

At some point, the County decided to allow Parcel 1 to remain on greenbelt and to remove Parcel 2 from greenbelt. The County does not contest the taxpayers' claim that Parcel 2 meets the greenbelt qualifications found in Section 59-2-1004(1). The County contends, however, that the Commission should not grant the taxpayers any greenbelt relief for Parcel 2 because the taxpayers failed to provide the County with an application upon request. For land still under greenbelt, Section 59-2-508(4)(a) provides that once an application for greenbelt assessment has been approved, the County may "require the owner to submit a new application or a signed statement . . . that verifies that the land qualifies for [greenbelt] assessment[.]"

TAXPAYER-2 Affidavit may or may not have been a statement that was sufficient under Section 59-2-508(4)(a) for Parcel 2 to have remained on greenbelt at the time the County Assessor requested a new application. However, the Commission need not reach the issue of whether the County's action to remove Parcel 2 from greenbelt was appropriate, as the rollback issue does not appear to be properly before the Commission.

Section 59-2-506(10) provides that a property owner "shall file an appeal . . . no later than 45 days after the day on which the county assessor mails the notice" withdrawing land from greenbelt and imposing the

Appeal Nos. 10-2356 & 11-15

rollback tax (“rollback notice”). The burden is on the taxpayers to show that they followed the proper procedures in appealing the rollback assessment. The taxpayers have not provided any information to show that they filed an appeal of the County’s action to the County BOE within 45 days of receiving the rollback notice.

As a result, it appears that the County’s action to remove Parcel 2 from greenbelt assessment and to impose a rollback tax became final once the 45-day appeals period provided under Section 59-2-506(10) expired. Had the taxpayers appealed the rollback tax within 45 days to the County BOE, it could have appealed the County BOE decision to the Commission. But, they did not file an appeal within the 45-day timeframe. In addition, the taxpayers have not proffered any evidence to suggest that the County deprived them of due process by failing to issue a rollback notice or by issuing an insufficient notice. Because the County’s actions to remove Parcel 2 from greenbelt and impose rollback taxes have become final, the Commission no longer has authority to consider the actions. Accordingly, the taxpayers’ request for the Commission to order the County to refund the rollback taxes for Parcel 2 should be denied.

**Greenbelt Assessment - 2008 Tax Year.** As explained above, the taxpayers failed to timely file an appeal concerning the County’s assessment of rollback taxes. Nevertheless, the Commission must determine whether the taxpayers timely filed appeals concerning Parcel 2’s greenbelt assessment for the 2008 and 2010 tax years, which are different matters from the rollback matter.

The taxpayers have not timely filed an appeal concerning Parcel 2’s greenbelt assessment for the 2008 tax year. The taxpayers did not file an appeal of Parcel 2’s 2008 assessment to the County BOE by September 15, 2008 or within 45 days of the County Auditor mailing the 2008 valuation notice, as required under Section 59-2-1004(2)(a). Nevertheless, the Commission found that a “late” 2008 appeal was appropriate to address the acreage of taxpayer’s land, based on a March 4, 2009 request the taxpayers submitted to the Commission concerning the 2008 tax year.

Appeal Nos. 10-2356 & 11-15

In *Appeal No. 09-0835*, the Commission issued an Order for RURAL COUNTY to Reconvene the 2008 Board of Equalization to Consider Correction of Factual Error (Jan. 27, 2010) (“Reconvene Order”). In the Reconvene Order, the Commission determined that the acreage issue was a “factual error” for which it could order the 2008 County BOE to reconvene pursuant to Section 59-2-1004(2)(b) and Rule 66. The Commission, however, did not address in the Reconvene Order the greenbelt assessment of Parcel 2.

In the Reconvene Order, the Commission stated that it was ordering the County BOE to be reopened to “hear the taxpayers’ late-filed appeal concerning the acreage issue.” The Commission also ruled that the “hearing before the County BOE is limited to the correction of factual errors and any resulting valuation changes.” Rule 66(C) clarifies that appeals accepted as late-filed appeals under Rule 66(B), which includes appeals accepted because of factual errors, “shall be limited to correction of the factual error and any resulting changes to the property’s valuation.” The Commission did not order the 2008 County BOE to reconvene to address whether Parcel 2 qualified for greenbelt assessment for the 2008 tax year. Accordingly, the taxpayers’ request for the Commission to find that Parcel 2 qualifies for greenbelt assessment for 2008 should be denied.

**Greenbelt Assessment - 2010 Tax Year.** The taxpayers timely filed a 2010 appeal concerning Parcel 2 to the County BOE. Accordingly, the Commission can address whether Parcel 2 qualifies for greenbelt assessment for 2010. The County does not contest the taxpayers’ assertion that Parcel 2 is land that meets the Section 59-2-503(1) requirements to qualify for greenbelt assessment. As issue, however, is whether the taxpayers have met the administrative, or procedural, requirements that must also be met before qualifying land is assessed under greenbelt.

In 2007 or 2008, the County removed Parcel 2 from greenbelt, which became final after the taxpayers failed to timely appeal the removal. By 2010, Parcel 2 had been removed from greenbelt for at least a year and perhaps as long as two years. Section 59-2-508 sets forth the procedural requirements that must be met before qualifying land is assessed under greenbelt. Because Parcel 2 was no longer assessed under greenbelt as of the

Appeal Nos. 10-2356 & 11-15

2010 lien date, the taxpayers were required to satisfy the procedural requirements of Section 59-2-508 in order for Parcel 2 to be assessed under greenbelt for 2010.

Section 59-2-508(1) provides that an owner of land eligible for greenbelt assessment “shall submit an application to the county assessor.” Section 59-2-508(2) requires the application to be on a form approved by the commission and to be submitted by “May 1 of the tax year in which [greenbelt assessment] is requested[.]” The taxpayers did not submit an application by May 1, 2010, in order for Parcel 2 to be assessed under greenbelt for the 2010 tax year. Accordingly, the taxpayers’ request for the Commission to find that Parcel 2 qualifies for greenbelt assessment for 2010 should also be denied.

---

Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Commission first finds that it does not have subject matter jurisdiction to determine whether the taxpayers took appropriate steps to subdivide the subject properties into ##### separate, #####-acre parcels under the 1994 County ordinance. Accordingly, the Commission grants the County’s motion to dismiss this issue from the instant appeals.

Second, the Commission denies the taxpayers’ request for the Commission to order the County Attorney to commence an action against the assessor’s bond pursuant to Section 59-2-315. Third, for various reasons, the Commission denies the taxpayers’ request to find that Parcel 2 qualifies for greenbelt assessment for the 2008 and 2010 tax years and their request to order the County to refund the rollback taxes paid when the County removed Parcel 2 from greenbelt. It is so ordered.

Appeal Nos. 10-2356 & 11-15

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.  
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

KRC/10-2356.int & 11-15.int

ADDENDUM

**Utah Code Ann. §59-1-210:**

59-1-210. General powers and duties.

The powers and duties of the commission are as follows:

- (1) to sue and be sued in its own name;
- (2) to adopt rules and policies consistent with the Constitution and laws of this state to govern the commission, executive director, division directors, and commission employees in the performance of their duties;
- (3) to adopt rules and policies consistent with the Constitution and laws of the state, to govern county boards and officers in the performance of any duty relating to assessment, equalization, and collection of taxes;
- (4) to prescribe the use of forms relating to the assessment of property for state or local taxation, the equalization of those assessments, the reporting of property or income for state or local taxation purposes, or for the computation of those taxes and the reporting of any information, statistics, or data required by the commission;
- (5) to administer and supervise the tax laws of the state;
- (6) to prepare and maintain from year to year a complete record of all lands subject to taxation in this state, and all machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims;
- (7) to exercise general supervision over assessors and county boards of equalization including the authority to enforce Section 59-2-303.1, and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes, so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination;
- (8) to reconvene any county board of equalization which, when reconvened, may only address business approved by the commission and extend the time for which any county board of equalization may sit for the equalization of assessments;
- (9) to confer with, advise, and direct county treasurers, assessors, and other county officers in matters relating to the assessment and equalization of property for taxation and the collection of taxes;
- (10) to provide for and hold annually at such time and place as may be convenient a district or state convention of county assessors, auditors, and other county officers to consider and discuss matters relative to taxation, uniformity of valuation, and changes in the law relative to taxation and methods of assessment, to which county assessors and other officers called to attend shall attend at county expense;
- (11) to direct proceedings, actions, and prosecutions to enforce the laws relating to the penalties, liabilities, and punishments of public officers, persons, and officers or agents of corporations for failure or neglect to comply with the statutes governing the reporting, assessment, and taxation of property;
- (12) to cause complaints to be made in the proper court seeking removal from office of assessors, auditors, members of county boards, and other assessing, taxing, or disbursing officers, who are guilty of official misconduct or neglect of duty;
- (13) to require county attorneys to immediately institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals, and punishments for violations of the laws relating to the assessment and taxation of property in their respective counties;
- (14) to require any person to furnish any information required by the commission to ascertain the value and the relative burden borne by all kinds of property in the state, and to require from all state and local officers any information necessary for the proper discharge of the duties of the commission;

- (15) to examine all records relating to the valuation of property of any person;
- (16) to subpoena witnesses to appear and give testimony and produce records relating to any matter before the commission;
- (17) to cause depositions of witnesses to be taken as in civil actions at the request of the commission or any party to any matter or proceeding before the commission;
- (18) to authorize any member or employee of the commission to administer oaths and affirmations in any matter or proceeding relating to the exercise of the powers and duties of the commission;
- (19) to visit periodically each county of the state, to investigate and direct the work and methods of local assessors and other officials in the assessment, equalization, and taxation of property, and to ascertain whether the law requiring the assessment of all property not exempt from taxation, and the collection of taxes, have been properly administered and enforced;
- (20) to carefully examine all cases where evasion or violation of the laws for assessment and taxation of property is alleged, to ascertain whether existing laws are defective or improperly administered;
- (21) to furnish to the governor from time to time such assistance and information as the governor requires;
- (22) to transmit to the governor and to each member of the Legislature recommendations as to legislation which will correct or eliminate defects in the operation of the tax laws and will equalize the burden of taxation within the state;
- (23) to correct any error in any assessment made by it at any time before the tax is due and report the correction to the county auditor, who shall enter the corrected assessment upon the assessment roll;
- (24) to compile and publish statistics relating to taxation in the state and prepare and submit an annual budget to the governor for inclusion in the state budget to be submitted to the Legislature;
- (25) to perform any further duties imposed by law, and exercise all powers necessary in the performance of its duties;
- (26) to adopt a schedule of fees assessed for services provided by the commission, unless otherwise provided by statute. The fee shall be reasonable and fair, and shall reflect the cost of services provided. Each fee established in this manner shall be submitted to and approved by the Legislature as part of the commission's annual appropriations request. The commission may not charge or collect any fee proposed in this manner without approval by the Legislature;
- (27) to comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings; and
- (28) to distribute the money deposited into the Rural Health Care Facilities Account as required by Section 26-9-4.

**RURAL COUNTY Ordinances:**

**17.08.010** Decision making and administrative bodies.

The decision making bodies and officials identified within this title have responsibilities for implementing and administering the RURAL COUNTY general plan, and the RURAL COUNTY land management code, of which the ordinance codified in this Title 17 is a part. Other county departments, bodies and officials may have specific responsibilities related to the RURAL COUNTY general plan and RURAL COUNTY land management code and are identified when appropriate.

**17.08.020** Board of county commissioners.

The RURAL COUNTY board of county commissioners ("county commission") shall have the following powers and duties:

Appeal Nos. 10-2356 & 11-15

A. To adopt the RURAL COUNTY general plan and all elements of the general plan;

.....

C. To approve, deny, or to amend and approve applications for development approval;

D. To render, or to appoint a hearing officer to render a determination pursuant to the provisions of Chapter 17.80, if an applicant asserts a deprivation of, or has been subject to, a taking of property without just compensation or asserts some other invalidity by the passage of the ordinance codified in this title;

.....

F. To designate and appoint an administrative official to decide routine and uncontested matters which otherwise would be heard by the BOA;

G. To hear appeals of final decisions of the planning commission for conditional use permits; and

H. To take such other action not expressly delegated to the zoning administrator, planning commission or the BOA that may be desirable and necessary to implement the provisions of the RURAL COUNTY general plan and the RURAL COUNTY land management code.

**17.08.030 - Planning commission.**

A. Creation. There is created and established an RURAL COUNTY planning commission ("planning commission").

B. Powers and Duties. The planning commission shall be an advisory body to the county commission pertaining to the RURAL COUNTY general plan and the RURAL COUNTY land management code. The planning commission shall have the following powers and duties:

.....

5. To hear, review, recommend approval or disapproval, or approve or disapprove applications for development approval, as authorized by this Title 17 and the land management code;

.....

**17.08.040 - Board of adjustment.**

There is created and established an RURAL COUNTY board of adjustment ("BOA").

A. Powers and Duties.

1. The BOA shall hear and decide:

a. Appeals from final administrative decisions of the zoning administrator applying the provisions of this title;

b. Variances from the terms of this title with a finding of unreasonable hardship as required by Chapter 17.64

.....

2. The BOA may determine those matters it considers as routine and uncontested to be heard and decided by the zoning administrator as authorized by Section 17.64.080

3. The BOA may recommend to the county commission and/or planning commission revisions to the RURAL COUNTY general plan and the RURAL COUNTY land management code.

.....

**17.76.010 Administrative decisions--Zoning administrator.**

A. Except as provided in this chapter or county ordinance, decisions of the zoning administrator in applying the provisions of this title, or decisions of the enforcement officer in applying Chapters 8.20 and 17.72 by enforcing county zoning and nuisance ordinances, may be appealed to the board of adjustment by filing an application and all necessary materials within thirty days of the date of the zoning administrator's decision.

B. Following receipt by the board of adjustment of an appeal of a decision by the zoning administrator, the board of adjustment shall give notice and schedule a public hearing. Following the hearing and the submission of all necessary and relevant information, the board of adjustment shall render a decision on the appeal.

....

**17.76.020** Board of adjustment decisions.

Any person aggrieved by a decision of the board of adjustment may, within thirty days after the decision is made, present to the district court a petition specifying the nature of the appeal and the grounds on which they are adversely affected.

**17.76.030** Planning commission decisions.

Any person aggrieved by a decision of the planning commission may file an appeal with the appellate body within thirty days of the date of the decision specifying the nature of the appeal. All final decisions of the planning commission concerning conditional use applications shall be appealed to the board of county commissioners.

**17.76.040** Board of county commissioners' decisions.

Any person aggrieved by a decision of the board of county commissioners may file an appeal to district court within thirty days of the date of the decision pursuant to the provisions of the County Land Management and Development Act, Utah Code.

**17.76.050** Judicial review.

No petition for judicial review may be filed unless and until the applicant has exhausted all manner of relief and processes available with RURAL COUNTY as are provided by this title.

**17.80.030** - Review of final county decision—Procedures.

Any owner of private real property who claims there has been a constitutional taking of private real property shall request a review of a final decision of the county.

The following are specific procedures established for such a review:

A. The person requesting a review must have obtained a final and authoritative determination by the county relative to the decision from which they are requesting review.

B. Within thirty days from the date of the final decision that gave rise to the concern that a constitutional taking may have occurred, the person requesting the review shall file in writing, in the office of the county clerk, a request for review of that decision. A copy shall also be filed with the county attorney.

C. The board of county commissioners, or an individual or body designated by the county commission, shall immediately set a time to review the decision that gave rise to the constitutional takings claim.

....

F. The county commission, or an individual or body designated by the county commission, shall hear all the evidence related to and submitted by the applicant, city or any other interested party.

G. A final decision on the review shall be rendered within fourteen days from the date the complete application for review has been received by the county clerk. The decision of the county commission, or individual or body designated by the county commission, regarding the results of the review shall be given in writing to the applicant and the officer, employee, board or commission that rendered the final decision that gave rise to the constitutional takings claim.

....